

**AB 2842 (Leno)**  
**Campaign Loans**

**Version:** Amended, April 14, 2004

**Status:** On Senate floor

**Urgency measure**

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**Executive Summary**

AB 2842 would establish that the \$100,000 limit on the amount that a state candidate may personally loan to his or her campaign includes the proceeds of a loan obtained by the candidate from a commercial lending institution.

**Recommendation**

Staff recommends that the Commission support the bill. Staff also recommends that the Commission express a preference for the language presented in AB 2842, rather than the language used in SB 1449. The Assembly bill awaits a Senate floor vote, and the Senate bill awaits an Assembly floor vote, so both bills are likely to reach the Governor soon.

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**Background**

Under current law, a candidate for elective state office may not personally loan to his or her campaign an amount, the outstanding balance of which exceeds \$100,000. Loans obtained by a candidate from a commercial lending institution are exempt from the \$100,000 loan limit.

During the recall election, Governor Schwarzenegger borrowed \$4.5 million from a commercial lending institution and loaned \$4 million of the loan proceeds to his campaign. The \$4 million was then reported on his campaign statements as a loan. Schwarzenegger's actions were consistent with regulation 18530.8(c), which provides that the proceeds of a loan made to a candidate by a commercial lending institution do not count toward the \$100,000 loan limit.

Schwarzenegger and his campaign committee were then sued in superior court on the ground that the \$4 million loan to his committee violated the Act. Although the court found in *Camp v. Schwarzenegger* (Super. Ct. Sacramento County, 2004, No. 03AS05478) that the loan had been obtained in the regular course of the bank's business on terms available to the general public, it also found that the loan had violated the Act. The court stated:

"The Court finds that Section 85307(b) prohibits a candidate from personally loaning his or her campaign an amount, the outstanding balance of which exceeds one hundred thousand dollars (\$100,000), regardless of the original source of the monies used by the candidate to fund the personal loan. In this respect, the limitation under 85307(b) applies even though the original source of the funds used by the candidate to fund the loan to his or her campaign is a commercial loan to the candidate that meets the requirements of Section 85307(a)."

The court barred Governor Schwarzenegger from using campaign funds to repay the personal loan and further found that "2 CCR section 18530.8(c) is an erroneous and unreasonable construction of Section 85307, which fails to carry out the purpose of, and is inconsistent with, Title 9 of the Government Code."

### Analysis

AB 2842 would amend section 85307 to expressly include funds obtained from loans from commercial lending institutions in the \$100,000 personal loan limit. The bill would make the following changes to existing law:

~~“(a) The provisions of this article regarding loans apply to extensions of credit, but do not apply to loans made to a candidate by a commercial lending institution in the lender’s regular course of business on terms available to members of the general public for which the candidate is personally liable.~~

“(b) A candidate for elective state office may not personally loan to his or her campaign an amount, *including the proceeds of a loan obtained by the candidate from a commercial lending institution*, the outstanding balance of which exceeds one hundred thousand dollars (\$100,000). A candidate may not charge interest on any loan he or she made to his or her campaign.” (Section 85307)

Other pending legislation, SB 1449 (Johnson) also addresses this topic. In contrast to AB 2842, SB 1449 would keep the language of subdivision (a) and make the following changes:

“(a) The provisions of this article regarding loans apply to extensions of credit, but do not apply to loans made to a candidate by a commercial lending institution in the lender’s regular course of business on terms available to members of the general public for which the candidate is personally liable.

“(b) ~~A~~ *Notwithstanding subdivision (a)*, a candidate for elective state office may not personally loan to his or her campaign, *including the proceeds of a loan obtained by the candidate from a commercial lending institution*, an amount, the outstanding balance of which exceeds one hundred thousand dollars (\$100,000). A candidate may not charge interest on any loan he or she made to his or her campaign.” (Section 85307)

Under both bills, a candidate could borrow more than \$100,000 from a commercial lending institution, but could only *lend* to his or her campaign an amount that does not exceed a total outstanding balance of \$100,000. The amount that a candidate could borrow and *give* to his or her campaign (with no expectation of repayment) would not be subject to limits. AB 2842 provides that it would “clarify the law regarding candidate loans to the candidate’s committee in light of the ruling in *Camp v. Schwarzenegger* (citation omitted).”

Staff recommends that the Commission adopt a support position on AB 2842 and express to the Governor a preference for the language presented in AB 2842, should both bills be passed by the Legislature. It is staff’s opinion that deleting subdivision (a) will reduce questions of interpretation, in particular, the application of subdivision (a) in light of the fact that section 85307 is the only section in Article 3 that refers to loans. In addition, sections 82015 and 84216 can be used to define “extensions of credit.”